

House Select Committee on Homeowners Associations Meeting

March 4, 2010

1:00 pm

The House Select Committee on Homeowners Associations met on Thursday March 4, 2010 at 1:00 pm in the Legislative Office Building in room 421 to hold a meeting on issues concerning homeowners associations. The following members were present: Co-chairman McGee (presiding), Co-chairman Weiss, Representatives Howard, Cleveland, Heagarty and Wray. For visitors in attendance see the attached Visitor Attendance Sheet.

Representative McGee called the meeting to order. Introductions were made and he thanked the staff and legislative assistants for working hard to get the meeting together in a timely fashion. He also reported that he had many contacts from people across the State concerning homeowners' association issues and after discussing the issues with them, he referred them to the members that represent them so all of the members will be aware of the issues surrounding homeowners associations.

Representative McGee then introduced the first speaker, Miriam Baer, Legal Counsel and Assistant Director of the Legal Services Division with the North Carolina Real Estate Commission who brought the committee information regarding citizen inquiries and complaints concerning homeowners associations, the Commission's jurisdiction in responding to complaints and the real estate broker's duties in disclosing the existence of homeowners associations and covenants to the consumer. (see attachment 1).

Representative Heagarty asked if it is a burden to get the covenants. Ms. Baer responded that many times it is not, but if the management does not have them, a title search may be necessary.

Representative McGee asked if some brokers are not fully explaining the covenants of the property the consumers are buying. Ms. Baer answered that some covenants are very detailed and most brokers do not have the training to decipher them, do a title search or go to the public records to find them and in some instances one developer may have put covenants on a property and either sells the subdivision or goes bankrupt and the new developer may put new covenants on the new lots without changing the pre-existing homes' covenants. Ms. Baer also said that this is a complex area that not all people with broker licenses can handle.

Representative Weiss asked when the consumer finds out during the sale what the restrictive covenants are. Ms. Baer responded that the brokers are instructed

to make the buyer aware of the restrictions on use of the property and if they have questions, to get legal advice. She also stated that developers have their own forms and lawyers and the Commission does not require them to have a standard form.

Representative Cleveland remarked that wouldn't the buyer find out about the covenants from the lawyer at closing. Ms. Baer answered that it is a timing issue, that most buyers would have already signed a contract. Representative Cleveland asked about losing one's earnest money if they walk away. Ms. Baer said that the parties involved or the courts would decide.

Representative Howard asked about the Commission's Advisory Task Force and what recommendations were made. Ms. Baer said the recommendations are: (1) create a state agency (2) a community association board (3) a community association registry and fee (4) community management licensing (5) pre-licensing education (6) standard of conduct emphasizing money handling and finance and (7) a bonding requirement.

Representative Heagarty asked if the covenants are on file at the Register of Deeds. Ms. Baer said they are.

Representative Howard questioned the need for an agency. Ms. Baer said that it helps to have someone sign on to the idea of the need for laws and to understand them.

Representative Howard asked if a code of ethics would be appropriate and an easier route to take instead of a state agency. Ms. Baer responded that the Commission's committee's opinion was that it would be more efficiently handled in an agency.

Representative McGee thanked Ms. Baer for her presentation and recognized Representative Iler who was sitting in on the meeting.

Mr. Robb Baer, President of the Community Associations Institute was the next to speak regarding Community Management Companies and gave a power point presentation about manager licensing (see attachments 2, 3 and 4).

Representative McGee thanked Mr. Baer and did say that the two speakers are not related.

Representative McGee introduced Mr. Al Ripley from the North Carolina Justice Center to present their recommendations for the protection of homeowners from abusive practices used by homeowner associations (see attachment 5). He gave

actual case studies and explained how their organization put these recommendations together.

Representative McGee thanked Mr. Ripley. No questions were asked and Representative Weiss asked for Representative Earle's letter from a constituent to be added to the record (see attachment 6).

Representative Howard asked staff for the summary of statutes that pertain to homeowners associations, and Representative McGee asked the staff to prepare a concise version for the members. Martha Walston of staff replied that she would provide that for the committee.

Representative McGee thanked the presenters and staff and adjourned the meeting at 2:10 pm.

Representative William C. McGee,
Co-Chair

Jayne A. Nelson,
Legislative Assistant